

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

SERVICE OF NOTICE TO REAL ESTATE LICENSEE REGULATION PROPOSAL

NOTICE IS HEREBY GIVEN

The Acting Commissioner ("Commissioner") of the Department of Real Estate ("Department") proposes to adopt Section 2909 within Chapter 6, Title 10 of the California Code of Regulations ("Regulations"), relating to establishment of registered mail as the Department's form of service of notice to licensed real estate brokers and salespersons.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

Regular Mail

Department of Real Estate
Attn: Daniel E. Kehew, Sacramento Legal Office
2201 Broadway
Sacramento, CA 95818

Electronic Mail

DRERegulations@dre.ca.gov

Facsimile

(916) 227-9458

Comments may be submitted until 5:00 p.m., Wednesday, December 28, 2011.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW:

As with any disciplinary proceeding of government, the person subject to discipline must be served with notice of the action against him or her. Traditionally, when seeking to impose license discipline, the Department of Real Estate ("the Department") has served notice via personal service, an action currently undertaken via a private process serving company under contract to the Department. Even under this competitively bid contract, however, each instance of personal service demanded by the Department's enforcement duties exceeds \$90 in cost.

The Administrative Procedure Act, however, includes provision for the manner of service to the respondent to occur "by any means selected by the agency."

(Government Code Section 11505(c).) The provision also states that, “Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent’s address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.” (Id.)

The Department does require a licensee to keep a current mailing address on file with the Commissioner of Real Estate (“the Commissioner”). Section 2715 of the Regulations (Title 10, Chapter 6, California Code of Regulations) (“the Regulations”) of the Real Estate Commissioner, in conjunction with Sections 10162 and 10163 of the Business and Professions Code (“the Code”), requires each licensee to maintain a current mailing address on file with the Commissioner of Real Estate.

Each instance of service via registered mail will cost less than \$2, a significant savings to the Real Estate Fund over personal service.

With this proposed regulation, the Department adopts as its standard service of notice, where the person being served is a licensee, service via registered mail to licensee’s mailing address on file with the Commissioner. The regulation alerts licensees that their compliance with Section 2715 of the Regulations holds significance beyond the mere fact of the regulation; this mailing address is an active part of their due process right in this licensing scheme.

Purpose of Section 2909: This adoption will specify the form of process for notice to be used for active licensees who are subject to potential discipline under the Real Estate Law and Regulations, achieving a substantial cost savings for the Real Estate Fund.

Rationale of Section 2909: Licensees are required to have a mailing address on file with the Commissioner. Registered mailing is an accepted, and less expensive, form of service of notice. By specifying in regulation that registered mail is the Department’s form for service of notice to active licensees, the licensee population is reminded of the importance of maintaining a mailing address on file with the Commissioner, and the Department will achieve substantial cost savings.

AUTHORITY

Section 10080, Business and Professions Code.

REFERENCE

Sections 485, 10086, 10087, and 10175 et seq., Business and Professions Code; and Sections 11504 and 11505, Government Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated

below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of the Department. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at the Department's website at www.dre.ca.gov. As required by the Administrative Procedure Act, the Department's Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Real Estate, 2201 Broadway, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

The Department has determined that there is no substantial economic impact on any party from this proposal.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Creates a savings estimated at \$42,000 annually to the Department. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings regarding federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.

- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The Department has determined that there is no substantial cost to small business in California because this proposal adds no new requirements relating to small business.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 227-0425, or via email at DRERegulations@dre.ca.gov. The backup contact person is Mary Clarke at (916) 227-0780.

Dated: November 4, 2011
Sacramento, California

Daniel E. Kehew
Real Estate Counsel
Sacramento Legal Office